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FM AMEMBASSY JAKARTA  
TO RUEHC/SECSTATE WASHDC PRIORITY 4475  
INFO RUCPDO/DEPT OF COMMERCE WASHDC PRIORITY  
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY

UNCLAS JAKARTA 006335

SIPDIS

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STATE FOR EB/IFD/OIA JROSELI, L/CID EDAUGHTRY

E.O. 12958: N/A

TAGS: [EINV](#) [CASC](#) [KIDE](#) [OPIC](#) [PGOV](#) [ID](#)

SUBJECT: INDONESIA 2006 SECTION 527 INVESTMENT DISPUTES  
REPORT

REF: SECSTATE 60294

1. As requested in reftel, the following is post,s submission for the Department,s annual Section 527 report to Congress on U.S. citizen expropriation claims and other investment disputes involving foreign governments/economies. This cable updates post,s 2005 submission.

2. The United States Government is aware of one (1) claim of United States citizens against the Government of Indonesia (GOI). This case occurred in the power industry and was the direct result of the 1997-1998 Asian financial crisis.

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Power Case  
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3. a. Claimants A - B

b. September 1997 and January 1998

c. Status of case: Claimants A and B are joint investors in a project company called the Karaha Bodas Company (KBC). KBC entered into contracts with Pertamina and PLN Persero, companies wholly owned by the GOI, to construct, and provide electricity from, a geothermal power plant. After the GOI cancelled the power plant project, KBC filed for international arbitration against Pertamina. In December 2000, an international arbitration panel in Geneva, Switzerland awarded KBC \$261 million plus interest for the lost investment and potential future profits. Between December 2000 and June 2003, KBC succeeded in freezing approximately \$600 million of liquefied natural gas (LNG) revenues in GOI and Pertamina trust accounts in New York. A lengthy appeal process by Pertamina ensued.

In February 2003, the GOI asked the US Government to file a Statement of Interest in its appeals before the US Courts of Appeal for the Second and Fifth Circuits. The Department of State replied that the US Government had found no compelling interest in this private legal dispute between Pertamina and KBC. The State Department recommended that Pertamina and KBC enter into negotiations to resolve the dispute and offered to facilitate a meeting between the parties.

In January 2004, the US District Court for the Southern District of New York defined which funds KBC was entitled to receive out of Pertamina,s frozen bank accounts. The Court also denied, for the time being, the release of other frozen funds belonging to the GOI. At the same time, the Indonesian Energy Minister requested that the Department of State facilitate a KBC-Pertamina meeting to discuss an out-of-court settlement. The State Department arranged for both parties to meet in February 2004; those discussions did not lead to a

settlement of the dispute. In March 2004, the Fifth Circuit denied Pertamina,s request to nullify the original arbitration award, which had grown to approximately \$294 million including interest. Pertamina indicated publicly in April 2004 that it would pay the award, but began talks with the GOI to share in that payment.

In May 2004, the Indonesian police began to summon and question former KBC employees and ex- Pertamina officials involved with the project. Investigators from the national police,s anti-corruption squad indicated that corruption long had been suspected in the business dealings between Pertamina and KBC. Two former KBC employees (one US citizen and one Indonesian national) have contacted post to voice their concerns over police intimidation as it attempts to develop a corruption case against the two companies. The US citizen departed Indonesia as a result of the police summons. When his family also received a summons, he arranged for his family to depart Indonesia. The police have yet to make an arrest in connection with the investigation. Separately, a senior GOI official told us on May 28 that Pertamina lacks the funds needed to pay the arbitration award. The official indicated that Pertamina would likely seek to have the US Supreme Court hear the case.

In March, 2006, the U.S. Court of Appeals for the Second Circuit issued a &Minute Order<sup>8</sup> affirming the district court,s November 19, 2004 judgment against Pertamina. The Court of Appeals said that because the presumption that Pertamina owns the refinery funds situated in Bank of America is un rebutted, the district court correctly held that those funds belonged to Pertamina, rather than to the GOI, and ordered the Bank of America to turn over the balance of the underlying money judgment to KBC. Because the appellants may seek review of the 2d Circuit,s ruling in the Supreme Court,

the Second Circuit denied KBC,s motion of July 5, 2005, to vacate the district court,s stay of execution and turnover.

#### 14. List of Claimants:

- 1A. Florida Power and Light
- 1B. Caithness Energy

(Note: none of the above claimants has signed a privacy act waiver.)  
PASCOE